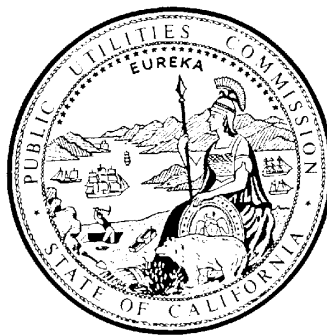


**CONSUMER PROTECTIONS
FOR A
COMPETITIVE TELECOMMUNICATIONS
INDUSTRY**



**TELECOMMUNICATIONS DIVISION STAFF
REPORT AND RECOMMENDATIONS**

February 3, 2000

California Public Utilities Commission
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Introduction

The rapid evolution of telecommunications services and the concurrent change in regulatory policies to allow and encourage competition has created a new market condition – a market served by multiple providers. Consumers can purchase a wide variety of telecommunications services through stores or the Internet, and purchase competing services from competing providers. The new market condition and concomitant potential for market abuse that exists in any market, raises issues about whether new methods are necessary to protect consumers. The recommendations contained within this report revise rules and traditional regulatory means to protect consumers in a competitive, yet regulated telecommunications marketplace.¹

Telecommunications consumer problems exist which require the California Public Utilities Commission (Commission) to take action at this time. Consumer protections for customers of wireless services ordered in D.96-12-071 have yet to be established, and too many historical rules and procedures have been accumulated that have become ineffectual in protecting consumers. Commission consumer protection rules contained in tariffs filed by utilities and approved by the Commission was designed for an era of monopoly regulation. In a competitive market, traditional tariff regulation becomes ineffectual and does not serve consumers well because:

1. Tariffs are increasingly subject to less Commission review.²
2. Tariffs are difficult for the public to access.

¹ Other Commission proceedings address rules that ensure a competitive marketplace. Those rules protect the integrity of the competitive marketplace, which benefits consumers. Those rules are not broached here.

² For example, Rulemaking 98-07-038 is currently pending, which would revise General Order 96-A tariff review procedures to include competitive service tariff changes effective one day after filing. Further, staff has no basis for review of much of the contents of a tariff because the Commission does not approve rates or “micro-manage” the service offerings of competitive service providers. Staff does review the consumer protection provisions contained in tariff filings.

3. Tariffs often protect the utilities rather than consumers.

Further, consumer protections vary between competitive service providers though the same consumer may purchase from these competing vendors. Because consumer protections differ depending on the telecommunication service provided, it is nearly impossible for consumers to understand their rights.

The Telecommunications Division recommends the Commission officially recognize the following “Consumer Rights” that it will enforce within the scope of its jurisdiction. The enumerated rights can then be used to ensure that consumer protection rules adopted by the Commission are consistent with consumer rights.

Telecommunications Consumer Rights

1. **Disclosure:** Consumers have a right to receive clear and complete terms and conditions for service agreements and disclosure of prices for goods and services, and to affirmatively accept all terms and conditions before being charged for services.
2. **Choice:** Consumers have a right to select their service vendors, and to have that choice respected by industry.
3. **Privacy:** Consumers have a right to personal privacy, to have protection from unauthorized use of their records and personal information and to reject intrusive communications and technology.
4. **Public Participation:** Consumers have a right to participate in public policy proceedings and shall be informed of means to participate.
5. **Oversight and Enforcement:** Consumers have a right to be informed of their rights and what agency enforces those rights. Consumers have a right to address how well state and federal regulators monitor and implement consumer protections on their behalf.
6. **Accurate Bills and Redress:** Consumers have a right to understandable and accurate bills for services they authorize and the opportunity of redress for problems they encounter. Vendors of telecommunications services shall provide clear information explaining how and where consumers can complain. Consumers shall have their complaints addressed without harassment.

Summary of Recommendations

Consumers and ultimately the competitive market would benefit from clear rules. Further, in an era of expanding use of electronic access services the Commission and the industry could better utilize the Internet to inform and educate consumers. The staff makes four separate recommendations. These recommendations build upon one another – meaning adoption of each successive recommendation requires the adoption of the previous. This report will refer to five different classes of telecommunications carriers: Interexchange Carrier, both tariffed and non-tariffed (IEC), Commercial Mobile Radio Service, a.k.a., wireless (CMRS), Competitive Local Exchange Carrier (CLEC), and Incumbent Local Exchange Carrier (ILEC).

Recommendation 1: Establish Consumer Protection Rules

An efficient method to publish consumer protection rules is to replace individualized rules for each class of telecommunications carriers with consumer protections applicable to all providers of competitive telecommunications services. Creating one set of Commission published rules would provide the opportunity to devise rules appropriate for the entire telecommunications market and allow for consistent consumer expectations. Carriers would be authorized to provide consumer protections that exceed the Commission's consumer protection standards.

The consumer protections proposed by Staff are contained in Appendix A. The rules should be evaluated and substantiated based on their concurrence with consumer rights. These rules enforced by the Commission would help to ensure that no provider or a class of provider has a cost advantage from not honoring fundamental consumer rights, that service disclosures are adequate for consumers to make an "informed" choice and that consumers are treated fairly.

The proposed rules are generally consistent with current policies, but do revise some previously adopted rules of the Commission and correct current rule deficiencies. Appendix B identifies rules that change current consumer protection policy, some of which include new carrier disclosure rules, availability of the consumer to restrict the

types of charges that may be on their telephone bills, new consumer rights regarding oral agreements, and other rules.

Recommendation 2: Apply Consumer Protection Rules to Wireless Carriers

The Commission, in Decision 96-12-071 removed the tariff filing requirement for CMRS (a.k.a., wireless) carriers, and stated its intent to establish consumer protection rules for the CMRS industry. Consumer protections for the CMRS industry have yet to be established by the Commission, and consumer complaints filed with the Commission provide examples of market abuse in the wireless market. Staff proposes to apply the telecommunications consumer protections to CMRS, and thereby render moot the issue of establishing separate rules for CMRS.

Recommendation 3: Replace Fully Competitive Service Tariffs with Consumer Protection Rules

Individualized tariffs in a competitive market are a burden upon the industry to file, staff to review, and the public to view, and can be used to the detriment of consumers when carriers can revise rules with little or no Commission scrutiny³. Thus, Staff proposes to replace competitive service tariffs (for which the Commission does not regulate rates) with the consumer protections adopted in recommendations 1 and 2.⁴ With Recommendation 3, the Commission and industry would more efficiently utilize resources by getting rid of the more expensive trappings of traditional regulation, such

³ The Commission no longer sets rates for competitive services and Staff review is limited to non-rate matters. Given the existence of nearly a thousand competitive carriers, the number of tariffs for Staff to review requires Staff to be selective in which tariff proposals receive evaluation – and institutionally jeopardizes consumer protection.

⁴ Recommendation 3 removes the tariff filing requirement for competitive services only. The following services should remain subject to tariff - basic exchange telephone service, services provided by local exchange companies operating under general rate case regulation (GRC-LECs), and Category I and II services of New Regulatory Framework Local Exchange Companies (NRF-LECs).

as individualized tariff rules, in exchange for explicit consumer protection rules that the public could understand, and the Commission would enforce.

The proposed consumer protection rules would revise current “non-tariff” policy and allow oral service agreements, though terms and conditions would have to be conveyed in writing to the customer. Though existing service agreements would continue to be valid, the consumer protections would supersede any conflicting term or condition. Given the increasing utilization of the Internet and access availability through schools and libraries, consumers would be well served if utilities published their rates, terms and conditions of service information on the world-wide-web, rather than with the Commission.⁵

Recommendation 4: Review the Limitation of Liability Consumer Protection

Limitations of liability, contained in utility tariffs, have served to protect carriers and ratepayers from increased rates due to excessive liability costs. Public Utility Code Section 495.7 (h) requires that carriers that do not file tariffs can not be afforded a tariff limitation of liability, though their non-tariffed service contracts may include limitation of liability clauses not enforced by the Commission. This policy encourages some carriers to continue to file tariffs with the Commission in order to maintain an authorized liability protection. Staff questions the public benefit of policies that continue an outdated tariff filing practice and which result in unequal application of a limitation of liability.

Staff recommends that the Commission review the appropriateness of the limitation of liability policy. If the Commission continues to authorize a tariff limitation of liability, Staff

⁵ The FCC has similarly proposed this requirement in its Second Order on Reconsideration in CC Docket No. 96-61, *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*. The FCC proceeding deals with issues concerning the de-tariffing of interexchange services, and orders inter-exchange carriers to publicly disclose their "rates, terms, and conditions for their interstate, domestic, interexchange services," and requires those carriers with Internet websites to post such information online. Second Order, at p.1; see also pp. 4, 13-15, 18. The FCC's orders in this proceeding are now on appeal at the D.C. Circuit of the United States Court of Appeals.

recommends that revisions be made to allow determination of awards to be based on negligence, rather than gross negligence, and that liability limits be raised to reflect inflation.

Background

Today's telecommunications customer has many choices of telecommunications service providers. Most residential and business consumers have a choice among providers of wireless and long-distance services. Larger business consumers additionally have a choice among providers of access services, and in a limited fashion some residential consumers have choice of local service provider.⁶ In each case, consumers usually rely on the service providers for information about product and service choices. As the marketplace has become increasingly competitive, the role of the Commission in regards to some consumer protections has been less than clear, whereas in other areas Commission enforcement has become more focused.⁷

The basis of this report is that there is a need for the Commission to clarify the consumer protection rules that it will enforce. Prior to describing that need and elucidating rules, Staff first addresses whether the Commission should continue its consumer protection role in partnership with other state agencies, or whether that role should be left solely to other state agencies, and what specific rules, if any, are appropriate.

A. Recent Review of the Commission's Consumer Protection Role

In March 1998, the California Public Utilities Commission initiated an evaluation of its role and responsibilities with respect to consumer protection in the utility and transportation industries. Commissioner Nepper, the coordinating commissioner on consumer protection issues, created a staff interdivisional task force to offer

⁶ Over 30 thousand California consumers subscribe to competitively provided facilities-based local exchange service.

⁷ Enforcement against unauthorized transfers of service and unauthorized charges has been given the bulk of attention recently by the Commission and parties relative to other consumer protection issues, which are described later in the report.

recommendations to the Commission. As part of an information gathering effort, Commissioner Neepor hosted a Consumer Protection Roundtable on April 2, 1998, where representatives from the majority of the CPUC-regulated industries were invited to discuss the agency's consumer protection role and responsibilities for each of the regulated industries. Participants raised the following main points:

1. The Commission should foster a marketplace in which consumers are empowered and have confidence. This can be achieved through establishing rules, educating consumers, and helping consumers understand pricing of services.
2. Measures that are essential to consumer protection include setting clearly defined and uniform standards for the competitive marketplace, aggressively ensuring adherence to those standards, removing violators from the marketplace, and promoting consumer choice.
3. Consumer choice itself will encourage utilities to have high customer standards in order to stay competitively viable.

B. Commission Task Force Report

On July 31, 1998, the Commission staff released a document entitled "A Staff Report on the California Public Utilities Commission's Consumer Protection Role and Responsibilities". The Task Force Report was the product of several months of discussion by the staff task force and included input from stakeholder groups through Commission-led roundtables, interviews, and written comments. Comments were also received, after the release of the Report, from stakeholders as well as from Commission managers. The Report discussed the Commission's mission and objectives with regard to consumer protection, as well as its organizational structure and resources. The Report then listed four major challenges identified for the Commission:

1. Improve the public intake and informal complaint process
2. Proactively identify consumer problems and take expeditious corrective actions
3. Streamline consumer protection rules for competitive utility service providers
4. Ensure that consumers are knowledgeable about their rights and that service providers are aware of market rules.

The Commission's management with Commissioner involvement has taken action to address the challenges and Report recommendations. However, some issues must be put before the Commission and public for review. Specifically, Report recommendation number 6(a) states:

“The Commission should establish minimum and consistent consumer protection rules for the telecommunication industry”.

The question whether consistent rules are appropriate is addressed in Staff's Recommendation One, on Page 9.

C. Commission Role to Address Consumer Issues

In their comments at the April 2, 1998 roundtable, most parties expressed support for the Commission to establish consumer protection rules for the competitive marketplace. Further, filed comments on the Report specifically supported the Report's recommendation, stating that it was important for the Commission to establish the rules for market participants to abide by.⁸ Alternatively, one party argued that the Commission should not “reinvent” itself as a consumer protection agency because other agencies exist to do this today. Further, the party suggested that the Commission not abandon its core competency of economic regulation in protecting all consumers of utility services.⁹

The alternative suggestion warrants a response. If the Commission does not perform consumer protection in terms of market standards and complaint resolution, then the question remains whether state and federal “fair business practice” laws, and redress

⁸ Bird, Supershuttle; Blase, Pacific Bell; Conran, California Small Business Association; Ferraro, California Water Service Company; Julien, GeM; Hill, California Moving and Storage Association; Meyer, San Jose Water Company; Rodriguez, Latino Issues Forum; Schmid, Office of Ratepayer Advocates. Transcripts of the Roundtable Discussion on Consumer Protection Issues and the Role of the California Public Utilities Commission, April 2, 1998.

⁹ Ibid., Dasovich, Enron, p.16.

through the Department of Consumer Affairs and the civil courts adequately provide consumer protections.

Roundtable participants argued that Commission dispute resolution procedures are important because consumers are unable to expend the effort and resources required by the formal, small claims court process to pursue recompense of nominal amounts in dispute.¹⁰ The recommendation from Roundtable participants is that consumers should have the right to address their disputes easily and that the CPUC should provide a simple and effective means for consumers to do so.

State and federal general “business” statutes, such as those dealing with unfair and deceptive business practices, debt collection, credit availability and credit reporting, do not fully address the peculiarities of the telecommunications marketplace.¹¹ As a result, the FCC and the Commission have open proceedings to address specific ongoing consumer problems in the telecommunications marketplace, such as unauthorized switching of service provider (slamming), and unauthorized billing (cramming).¹² The CPUC should not wait for the FCC to resolve all regulatory issues, as Californians are harmed if the Commission lags in setting regulatory policy.¹³ Further, the California Legislature has affirmed that consumers have a right to protection from marketplace

¹⁰ Ibid. Shames, p.80.

¹¹ These peculiarities exist in part because of policies designed to promote competition, such as rules that permit the ease with which long-distance carriers may solicit new customers and bill through an established local carrier.

¹² FCC, Truth-in-Billing Proposed Rulemaking, CC Docket No 98-170, and CPUC, Slamming and Cramming proceeding, R.97-08-001 / I.97-08-002. Neither of these proceedings comprehensively addresses consumer protections.

¹³ The California Commission preceded the “1996 Telecommunications Act” requirements to open the telecommunications market to competition (1993-1995), and FCC rules to address slamming (1995). These actions not only benefit California consumers, but also provide a context for other regulatory agencies and parties to debate similar actions.

abuse, and that it is the Commission's responsibility to protect that right through rules and enforcement.¹⁴

Consumer rights and consumer protection rules are related to Commission policies. For example, the Commission policy to promote consumer choice and competition is supported by the consumer's right to choose his or her service provider; thus rules that require the industry to respect that choice are necessary. Further, the Commission's policy to promote competition in all telecommunications markets can only succeed if consumers are provided adequate information upon which to make an informed choice.¹⁵

At the Roundtable discussion, it was recognized that utilities process most consumer complaints, and for the lesser number of complaints that reach the Commission, most are resolved at the informal level. However, it was emphasized that consumers must be empowered with efficient dispute resolution procedures, and that the Commission should do more to ensure complaints are adequately resolved at the informal complaint level, rather than through the lengthy formal complaint process.¹⁶ The Roundtable participants assert that consumers have a right to speedy recourse and that the Commission should do more to effectuate that process.

D. Tariffs for Competitive Services are No Longer Appropriate

An issue regarding appropriate jurisdictional authority arises when a consumer files a complaint in the civil courts. Carriers have argued before civil courts that it is the exclusive jurisdiction of the Commission to address regulatory matters, including rates,

¹⁴ See statutes contained in P.U. Code Sections 885, 2889.5, 2889.9, 2890, and 2894.1.

¹⁵ Competition is the best means to ensure the availability and affordability of advanced telecommunications services and consumers must be empowered with information adequate to make informed choices. Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure, A Report to the Governor, CPUC, November 1993.

¹⁶ Roundtable Transcript: O'Donnel, p.67; Shames, p.80; Schmid, p.81; Schulte, p.82.

terms, and conditions of service.¹⁷ As a defense against accusations of fraud or contract violations, carriers have raised the “filed rate doctrine” (the availability of published rates).¹⁸ The filed rate doctrine states that a utility may not deviate from its tariffs, and that terms of the tariff are deemed a part of every contract between the utility and the consumer - meaning that the consumer is presumed to know the contents of the tariffs. Though tariffs may state that ambiguities are to be construed in the manner most favorable to the consumer, ambiguities contained in marketing of services are not, when the rules of the filed rate doctrine prevail. Abuse can occur where it is assumed a consumer is knowledgeable, but in reality information contained in tariffs is unknown to the consumer. A few examples follow:

1. A customer who negotiates a rate in a contract will find that the rate is not honored when it contradicts a tariff rate, when such contract requires tariff compliance.¹⁹
2. Consumers can be subject to marketing materials that are deficient of facts, (for example, that a rate or charge applies) because utilities can simply refer to a tariffed service, thereby incorporating the relevant tariff facts.²⁰

¹⁷ The “filed rate doctrine” is a legal doctrine established in federal law. The doctrine states that where a federal agency has lawfully determined or approved a rate, a purchaser has a right to that rate, with the purpose of preventing discriminatory rates.

¹⁸ In *AT&T v Central Office Telephone*, 1998, The Supreme Court upheld the filed rate doctrine when it ruled in favor of a utility, whose contract simply referenced tariff governance, even though the complainant clearly showed that the utility violated the contract terms. The assumption is that reference to a tariff, (a published, legal document) is tantamount to having conveyed the tariff contents. The Supreme Court held that “even if a carrier intentionally misrepresents its rate and (the customer) relies on the misrepresentation, the carrier cannot be held to the promised rate if it conflicts with the published tariff.”

¹⁹ Though few, the Commission has received informal complaints requesting contract terms to be honored by the utility. See Informal Complaint (IC) 97-13-2172 and IC.97-13-2065, and Formal Complaint (C) 99-01-040, *Rodney George v. Sprint PCS*.

²⁰ See IC.98-01-2108 and IC.97-13-8020. Additionally, Pacific Bell raised the Filed Rate Doctrine in C.99-01-039 (*Greenlining Institute and Latino Issues Forum v. Pacific Bell Information Services*) as the basis for it to be able to incorporate tariff contents when its marketing materials simply refer to the tariff service. (See Reply Comments of Pacific Bell to Late-Filed Comments of Greenlining Institute and Latino Issues Forum in R.98-07-038.)

Footnote continued on next page

3. Consumers can be subject to contract “renewal” solicitations, which do not disclose relevant terms and conditions contained in the original contract that impact the new contract.²¹

In each of these instances, the consumer is not able to make an informed choice because information is hidden from the consumer. If consumers requested access to utility tariffs filed at Commission offices, staff could not be sure that these tariff books reflect currently applicable pages, because the placing of revised tariff pages into tariff books for most of the 1,000 certificated utilities is grossly backlogged. More importantly, it is unreasonable to expect consumers to visit PUC offices in order to view service terms. The antiquated tariff system should be revised to better assist consumers. Developing disclosure rules such that consumers can make informed choices is a fundamental role of the Commission in concert with promoting competition and opening markets.²² Because up-to-date tariffs are not readily available, but are contained only in some utility offices, it is important that consumer protection rules be clear about the availability and conveyance of service terms and conditions.²³

Complaint Case C.99-01-039 is pending. Similarly, MCI did not disclose on its marketing materials that it would charge its airline mileage program customers to recoup the “franchise excise tax” it paid for acceptance of airline miles. Only the MCI tariffs on file with the FCC disclose that such a charge is applicable.

²¹ See Case No. B C207636 Los Angeles Superior Court. The complaint alleges, among other things, “suppression of material fact”, (Civil Code Section 1750) that the company has “an obligation to make disclosure of material terms related to acceptance of the ‘promotional offer.’” p.21. Also see IC.98-01-2108, IC.97-13-8020, IC.97-13-2236, and IC.97-13-2166.

²² In its report to the Governor, the Commission stated: “To protect consumers, interagency cooperation should have as its principal focus: 1) to develop disclosure rules necessary for consumers to make intelligent choices among an expanding range of technology and service options; 2) to ferret out unacceptable sales practices; and, 3) to assure that aggrieved consumers have avenues available to seek relief”. (Enhancing California’s Competitive Strength: A Strategy for Telecommunications Infrastructure, p.15.)

²³ In lieu of detariffing, the Commission may consider requiring carrier tariffs to be available via the internet. However, this option does not resolve the major problems with tariffs as noted above. Thus, consumer protections may be necessary to ensure that service agreements comport fully with filed tariffs, and that marketing materials provide adequate disclosure.

E. Current Consumer Protection Rules are Deficient

Though participants at the roundtable emphasized that the Commission needs to set and enforce rules, one participant emphasized:

...There is room for, and the need for a real debate about which one of those rules are critical and which ones are perhaps not as critical.²⁴

To develop a single set of rules, the Commission would in effect determine the critical rules and remove the inappropriate rules. This step is necessary because rules and regulations have evolved differently for wireless, long-distance and local services due to the pace of technological change, the emergence of competition, and the processes by which issues are raised before the Commission. The result is different “regulatory classes” of carriers – such as the Commercial Mobile Radio Service provider (CMRS), Competitive Local Exchange Carrier (CLEC), Non-Dominant Interexchange Carrier (NDIEC), and Incumbent Local Exchange Carrier (ILEC). Though each class of carrier is in a different stage of competition, this is not justification for consumers to be subject to different consumer protections.

A complete set of staff proposed consumer protection rules is contained in Appendix A. Below, are some of the deficiencies that exist today that the proposed rules resolve.

1. Rules are not consistent with Consumer Rights.
2. Consumer Rights and Carrier Rules are not defined.
3. Customers are bound to tariff rules regardless of the service agreement entered into with the carrier.
4. Customers are confused by the complexity of telecommunications billings.
5. Carriers are not required to provide consumers with rates, charges, terms and conditions in writing, when requested.
6. Carriers are allowed to make “minor” increases in rates and charges in customer accounts without conveying these increases to the consumer.

²⁴ Roundtable Transcripts, Stan Ferraro, p.102.

7. Carriers can offer service agreements subject to “early termination fees” and automatic contract renewals without written customer acknowledgment.
8. Carriers are allowed to place discretionary charges in the regulated surcharge or fee area of the bill, which implies that the charge is mandated by a regulatory authority.
9. Carriers can provide certain services without customer knowledge or affirmation.
10. Customers do not have access to private information carriers are maintaining.
11. Customers have to prove gross negligence in the event of a utility’s failure to perform.
12. Upon January 1, 2001, any product or service can be billed through a telecommunications carrier and appear on the telephone bill.

Recommendation 1: Establish Consumer Protection Rules

The Commission’s existing consumer protection rules for telecommunications carriers are found in Decision (D.) 95-07-054 (for CLECs), D.98-08-031 (for NDIECs which elect to offer detariffed services), GO 96-A, individual utility tariffs, various Public Utility Code Sections, and various Commission Decisions. The Commission has yet to establish consumer protection rules specific to wireless service providers.

The existence of so many versions of consumer protections is problematic because it is not clear which consumer protection rule applies, if any. When a complaint is received, staff must look in the tariffs in order to determine which consumer protection rules are applicable to the particular service. Additionally, industry entrants with multiple authority are referred to a plethora of Commission documents to determine the rules with which they must comply for each authority. Thus, a utility that offers a variety of competitive telecommunications services will be subject to different rules. Given that the Commission receives over 250 consumer contacts per day regarding telecommunications matters, streamlining rules would make Commission enforcement and industry compliance more efficient.

More importantly, clarifying and publishing consumer protection rules would benefit consumers. If we assume consumers are entitled to simple, cohesive, and understandable protections, then it is incumbent on regulatory agencies to provide them. Giving consumers a stack of rules, which vary by market segment, by tariffed

versus non-tariffed services, etcetera, confuses consumers and is a disservice to them. Staff proposes to evaluate various consumer protection rules contained in tariffs and Commission decisions, and synthesize them into a streamlined set of Consumer Protection Rules applicable as a minimum to all telecommunications services. The principle to clarify competitively neutral rules is supported by Roundtable participant comments as noted previously. The benefits that we anticipate include²⁵:

1. Consumers will be better protected from unfair business practices when afforded an appropriate set of rights and responsibilities.
2. The Commission will be better able to evenhandedly enforce rules when they are clearly expressed and applicable to all competitors.
3. Carriers will be subject to the same minimum rules, thereby leveling the regulatory “playing field”.
4. The Legislature and Public will be better able to understand the role of the Commission during the transition to fully competitive telecommunications markets.

The Staff proposed consumer protections would revise rules recently established in D.98-08-031, (the Streamlining investigation) and in D.95-07-054 (Local Exchange Competition) and other relevant Commission decisions.²⁶ The Staff proposes that the consumer rights be considered useful guiding principles in evaluating the consumer protection rules contained in Appendix A.

²⁵ As an incidental benefit, these proposed streamlined consumer protections address the need to establish CMRS terms and conditions as required in Decision 96-12-071, and to separately streamline or update CLEC and NDIEC consumer protection rules within their respective proceedings.

²⁶ The subject consumer protection rules were discussed in several meetings between Telecommunications Division Staff and interested parties, both before and after issuance of R.98-07-038. The Commission’s GO 96-B proposal contained in R.98-07-038, excluded the “staff proposed consumer protections” based on the existence of the Telecommunications “Streamlining” proceeding R.94-02-003. The “Streamlining” proceeding was limited to developing consumer protections applicable to detariffed IECs, which were eventually adopted in D.98-08-031. Today’s effort is intended to formulate a comprehensive approach to consumer protection.

Commission rules should be consistent with consumer rights and obligations. It is on the basis of consistency with “rights and obligations” that staff wishes to have parties comment on the proposal. Consumer Rights are not rules, and since utilities are bound by rules, Staff firmly believes that focusing on consumer rights, without identifying the corresponding rules would result in giving lip service to effectual consumer protections. Since these rights are already embodied within Commission rules, limiting our discussion solely to “rights” would likely not benefit consumers. Lingering consumer protection issues need resolution through rule changes, because enforcement is done through rules.

Staff’s proposed rules treat competitive services equally, with additional consumer protection standards applicable to basic exchange telephone services. The proposed consumer protections would apply to intrastate services of all telecommunication corporations operating within the State of California.

The Commission-published consumer protection rules would supersede a conflicting utility tariff rule, where the tariff is less protective - though a utility would be authorized to provide consumer protections that exceed the protections contained in the Commission’s published rules. Utilities who are required to continue to file tariffs would certify by letter to the Telecommunications Division Director that the existing tariffs meet or exceed the Consumer Protections. Though staff expects many utility tariffs already meet these requirements in most respects, tariffs that do not meet or exceed the minimums would have to be revised, and such tariff revision could simply refer to the applicability of the Consumer Protections.

Recommendation 2: Apply Consumer Protection Rules to Wireless

A. How Rules Apply

The staff proposal resolves outstanding issues concerning the consumer protections applicable to Commercial Mobile Radio Service (CMRS) (a.k.a. wireless) providers, as described in D.96-12-071. That decision directed the assigned ALJ to issue a procedural ruling addressing the development of consumer protection rules for CMRS providers. Rather than develop specific CMRS rules, staff believes it appropriate that

the consumer protection rules apply to CMRS. This would allow the wireless proceeding, I.93-12-007 to be closed. Absent adoption of generally applicable consumer protections to CMRS, then staff proposes that its proposed rules be applicable specifically to CMRS, per D.96-12-071, and for I.93-12-007 to remain open to address the specific rules applicable to CMRS.

In D.96-12-071, CMRS providers were exempted from Commission approval of tariffs or customer contracts. The decision requires that all CMRS providers must maintain a permanent record in their own offices of all rate schedules and other terms and conditions of service, and revisions thereto. This has caused peculiar problems for some customers of CMRS services, which are described in Part B, “Evaluation of Consumer Complaints”.

The intent of the staff proposal is to impose only those requirements on CMRS providers that are required by statute and necessary to protect the public interest with respect to “terms and conditions”. Federal law has removed state rate regulation for all CMRS providers, but leaves in place the states’ authority to regulate other “terms and conditions” of service.²⁷ The Federal legislative history provides examples of “terms and conditions” as including;

Customer billing information and practices and billing disputes and other consumer protection matters... transfers of control, and the bundling of services and equipment.... This list of examples is illustrative only and not meant to preclude other matters generally understood to fall under “terms and conditions.”²⁸

Regarding consumer protections and the Budget Act, in D.96-12-071, the California Commission stated:

²⁷ Federal 1993 Budget Act, August 10, 1993, 47 USC Section 332(c)(3)(A) Communications Act.

²⁸ Ibid., as set forth in House Report No. 103-111.

In order to provide for regulatory continuity between now and the time we adopt a set of consumer protection rules applicable to CMRS providers, as an interim measure, we shall continue to enforce each CMRS provider's existing consumer protection rules. By existing consumer protection rules, we refer to those categories of rules summarized in GO 96-A, Section II.C (4). These rules ... are set forth in the existing tariffs currently in effect for each CMRS provider, even though a copy ... may not be on file with the Commission. We shall apply these existing rule provisions in dealing with any CMRS consumer complaints or billing disputes that come before us during this interim period.²⁹

Once we adopt a generic set of consumer protection rules for CMRS providers, any previously filed GO96-A CMRS tariff rules shall be superseded by those newly adopted rules.

Staff intent is to ensure reasonable consumer protections are in place and to apply them equally, when appropriate, to all telecommunications services, including wireless services. Thus, the consumer protection rules (except those rules applicable to the provision of basic exchange service) would apply to wireless services as they do to other competitive telecommunications services, and the rules would similarly supersede any utility rule that does not meet or exceed the minimum.

B. Evaluation of Consumer Complaints

The Commission received in 1998, 2,404 and in 1999, 3,356 informal complaints regarding the 158 registered CMRS providers operating in California. Staff reviewed two groups of complaints received by the Commission regarding wireless services, to

²⁹ GO96-A, Part II.C. (4), requires carriers to include appropriate general rules that cover the application of all rates, charges and service when such applicability is not fully set forth in and as a part of the specific rate schedules themselves. Such general terms include: definitions, description of service, application for service, contracts, special information required on forms, establishment and re-establishment of credit, deposits, notices, rendering and payment of bills, disputed bills, discontinuance and restoration of service, information on services and promotional offerings, temporary service, continuity of service, and extensions of lines or mains. Note: The Commission's proposed revisions to GO96-A, in R.98-07-038 do not substantially change these particular elements. (See R.98-07-038, Appendix A, General Rule 8.5.7.)

determine their severity. The first group of complaints is a selection of 9 informal complaints that represent what staff contends is poor notice of the early termination fee and indicates how the lack of appropriate consumer protections in the CMRS industry can result in market abuse. These informal complaints are identified and described within the body of this report. The second group of complaints consists of the first 81 consecutive informal complaints against CMRS providers, resolved since January 1, 1999. Because all 81 complaints were reviewed regardless of their severity the sample indicates the types of CMRS complaints typically received by the Commission. These complaints are briefly described below and a compendium, which describes each complaint reviewed, is available upon request (See Appendix C).

1) One in four complaints are about early termination fees

Of the 81 complaints reviewed, 23, or over one in four complaints are challenges to the appropriateness of the early termination fee. In 20 of the 23 early termination complaints, consumers complain that they agreed orally to service and were unaware that an early termination fee applied to the specific agreement. Several carrier responses have been that consumers are made aware of early termination fees at the time service is initiated, and that “notice” that early termination fees apply is presented on the back of consumer bills. Some consumers have made statements that “notice” was not made nor agreed to.

In each of the early termination fee complaints contained in the sample, the utility credited the charges to the customer. Though individual consumers may be satisfied with the credit received after filing an informal complaint, other consumers may be paying these charges to avoid collections without knowledge of the informal complaint procedure. Further, this practice is different from some complaints filed in 1998 in which some utilities refused to credit the consumer the early termination fee although the consumer stated they had never received notice of applicability of a fee, and that they believe the utility had engaged in misrepresentation.

2) Carriers revise rules and Staff is uncertain which apply

In D.96-12-071, the Commission allowed CMRS carriers to remove filed tariffs from the Commission premises. In lieu of filed tariffs, the Commission stated its intent to enforce each CMRS provider's existing consumer protection rules, bound by those categories of rules summarized in GO 96-A, Section II.C (4), which include terms and conditions of service effective at the time D.96-12-071 was signed. However, the Commission did not further define "terms and conditions", nor what constitutes a "consumer protection" and did not say CMRS providers could not change their rules. Also, D.96-12-071 only requires CMRS utilities to provide Staff the "term and condition" rules in effect when requested. As a result, Staff is unable to challenge the appropriateness of virtually any CMRS rule change, or rules written by CMRS market entrants. Staff believes it inappropriate that CMRS providers are able to devise their own consumer protection related rules with no Commission oversight, yet Staff is bound to uphold those rules when answering an informal complaint.

For example, Bay Area Cellular Telephone Company (BACTC) terms and conditions contained in its Commission filed tariffs specified that a "change of plan does not change starting date of Commitment Period".³⁰ Because the Commission had not defined "terms and conditions" following the Federal Budget Act, BACTC was able to revise its terms and condition rules such that customers who accept a new rate plan are automatically subject to a new contract period. Staff was unaware of the rule change and attempted to enforce a "term and condition" rule no longer in effect.

A consumer may argue that the tariff rule change cited above results in loss of a consumer protection, because consumers may be offered services just prior to the end of their contract period without their being informed during the marketing pitch that acceptance constitutes a new commitment. Arguing that notice of a new contract period

³⁰ Bay Area Cellular Telephone Company Tariff, 1st Rev. Cal. PUC Sheet No. 4-2.2, effective on December 21, 1994.

was not provided in the oral marketing pitch is nearly impossible for the customer to prove.

For example, in a informal complaint regarding a change in rate plan, the customer had first established service, had changed rate plans based on the same provider's solicitation, and had attempted to cancel service on a later date. The customer claimed that he was never advised that changing his service plan resulted in accepting a new 2-year contract term.³¹ The utility response was:

Cellular One does not have a written contract with its customers, Cellular One has a paperless contract system relying on oral agreements. Cellular One informed Mr. X of its Early Termination Policy on August 5 1996. Cellular One also prints this policy on the back of all its bills under the heading "Terms and Conditions." Further it is Cellular One's policy to inform all customers of this policy when they initially enter an agreement with Cellular One.

The customer stated in a letter to the utility:

They told me that when I changed my plan almost two years earlier I had promised I would stay with Cellular One for 2 years. I told them I made no such promise and wanted some proof, or a signed agreement or a recorded promise. They told me that it was in fine print (on the back of the bill) – if I do not say anything during the first two bills, it becomes an agreement on my part. I don't think that is an honest way to do business, they should ask me if I wanted to stay with them for two years, and not trick me.

The Commission's informal CAB response was:

The utility's tariff on file with this Commission states that the customer is responsible for all charges made or accepted for the customer's telephone service. All the information available indicates that the services were properly billed. We conclude that Cellular One is acting properly and billing in compliance with filed regulations.

³¹ Informal Complaint (IC)98-01-2108.

This complaint indicates how the consumer is in a “catch-22”. The utility writes the rules that the Staff does not review, yet the consumer’s recourse is through the Commission, and the Commission’s informal complaint procedure upholds the utility rule.³² So favorable is the current situation to carriers that Cellular One’s tariff schedule and service agreements limit consumer recourse only to the Commission’s complaint procedures, by the following tariff rule:

Customer acknowledges that this (the Commission) is Customer’s exclusive remedy for any such complaint and that Customer has no other recourse at law or in equity.³³

In this and other informal complaints, the utility argued the applicability of their tariff rules which indicate that “early termination may apply”, and of a notice printed on the back of customer bills – payment of which indicates “acceptance of terms and conditions”. The Commission Consumer Affairs Branch (CAB) responses to complaints often describe to the consumer the applicability of the above utility-filed rule and the lack of Commission jurisdiction over rate matters. Though the Commission does not establish rates for CMRS, it can uphold a rate once agreed upon by the customer and carrier. Further, how terms and conditions are conveyed and agreed upon is within the jurisdiction of the Commission. Because the Commission has not established consumer protection rules applicable to CMRS, it is difficult for a CAB representative to correctly interpret the law in regards to individual complaints. In the example above, the CAB representative informed the consumer that to challenge the applicability of the charge

³² Two examples: LA Cellular stated in a letter to a complainant in IC.97-13-8020, “by... remitting payments, you have in fact, agreed to the terms and conditions of that promotion as filed in our tariff with the Public Utilities Commission.” The Commission’s informal response from CAB recognized the “implied agreement” as an enforceable utility rule. Similarly, in IC 97-13-2485, the complainant claimed no knowledge of early termination fees following establishment of service in response to a telemarketing call. The Commission’s CAB informal response to the complainant recognized implied knowledge of terms and conditions in accordance with utility rules. In both cases early termination fees were sustained.

³³ Cal. P.U.C. Schedule 2-T, sheet No. 12, canceling sheets filed prior to December 1, 1998.

would require a proof of fact that the utility violated a Commission rule or law, and that the consumer could file a formal complaint with the Commission. Thus, consumers must prove a violation of a rule, which is difficult to do – the rule is written by the utility, staff does not review or approve it, and the rule is ultimately upheld by the Commission's Consumer Affairs Branch.

3) Oral disclosure of certain terms is inadequate

In the case of oral agreements, a burden of proof is placed upon the consumer to challenge whether notice was provided. Below are examples of consumer statements regarding their claims of no notice of early termination fees:

I never agreed to an early termination charge regarding the FREE Mobile to Mobile promotion... Please note that both promotions were added after I activated my cellular telephone. How many people have you billed for early termination fees who never agreed to them?³⁴

They billed me for an "early termination charge" of \$150, based on an alleged contract/rate schedule that they have repeatedly refused to give me a copy of, and is different from my understanding of the agreement. I believe this is a violation of CPUC rules and contract terms for consumer's rights.³⁵

Unfortunately for consumers, they are hard pressed to prove a violation of a rule when the agreement was made orally. It is not known how many consumers acquiesce to the utility demands. Fortunately, as of late, those who have challenged the utility by filing an informal complaint with the Commission have usually received adjustments in the consumer's favor, but not in all cases.

In the following case, the consumer wished to terminate service because terms of the oral service agreement were not delivered. The utility conceded that the customer might

³⁴ IC.97-13-2236, Letter to LA Cellular, October 13, 1997.

³⁵ IC.98-03-7467, Letter to CPUC, August 15, 1998.

have received incomplete rate and coverage information from the dealer. Yet, in spite of their admission, the utility maintained that the customer was informed of the terms and conditions though no proof exists, other than the statements of the utility, representing the dealer, which conflict with the consumer's statement. The consumer stated:

I understand (the utility) has ... either taken or threatened to take this matter to collection. I value my credit and take pride in paying my just debts. I would hate to think that my credit will be marred, not for a debt I did not pay, but because of a charge Airtouch imposed because they did not fulfill their agreement. I respectfully request that this case remain open so this matter can be satisfactorily resolved, even if it requires that I testify to do so.³⁶

Staff believes it is inappropriate that a CMRS utility can enter into oral agreements without documenting subscriber agreement to an early termination condition, and then can threaten consumers with collections if they do not pay a termination charge. The opportunity for salespersons to leave out a material issue of fact regarding the terms of a promotion, and later to falsely claim that the consumer accepted all terms, exists because Commission rules are lax in this regard.³⁷

4) Jurisdiction is not clearly articulated or enforced

The Commission needs to identify terms and conditions for which the Commission has jurisdictional responsibility in the competitive market. The need for this becomes apparent when evaluating CMRS utility responses to formal and informal complaints; two examples follow.

A consumer had complained that a particular rate was offered and agreed to, then the CMRS utility through its billing changed the agreement terms. The consumer did not

³⁶ Letter, dated August 31, 1998 to PUC in IC.98-01-2846.

³⁷ The Commission G.O. 96-A proceeding to reform Informal Advice Letter processes has as a subject matter, the clarity of tariffs. Under consideration is a rule requiring utility marketing materials to factually represent utility tariffs. However, currently this rule could not apply to non-tariffed IECs and CMRS providers.

get satisfaction through the informal process, and filed a formal complaint. The utility moved to dismiss the complaint case, alleging that even if the facts were true, the granting of a particular rate (per the agreement) would require the Commission to establish a particular rate, which would be beyond its jurisdiction.

In another dispute, the customer had specific terms in a written contract, which the utility did not adhere to because the contract did not match available service plans contained in its schedules. After contacting the utility several times, the customer appealed to the Commission for resolution. Because the complaint regarded a “rate matter” the CAB representative left the resolution of the matter to the utility’s discretion. This is not appropriate; once the rates, terms and conditions are established in an agreement, the Commission can apply them in a dispute. Disputes regarding a contract rate, term, or condition should have been a matter resolved with oversight by staff, but because of the lack of rules defining the term and condition jurisdictional boundaries, Commission staff have in some cases inappropriately left matters for the utility to resolve.

Recommendation 3: Replace Fully-Competitive Service Tariffs with Consumer Protection Rules

Traditionally, all utility rates, terms and conditions of service were contained in tariffs filed at the Commission and subject to Commission review and approval. Today, tariff filing is optional for IECs. Though most IECs continue to file tariffs, some do not. Because the Commission does not regulate the rates of competitive services, the continued filing of tariffs for competitive services and Commission review of such tariffs has largely become perfunctory.³⁸

³⁸ The Commission could change its review procedures if market conditions warranted. Though the interexchange market is unlikely to become monopolistic, it is possible to become duopolistic or oligopolistic, and hence would likely require some additional form of regulatory

Footnote continued on next page

Staff reviews utility tariff filings for service initiation, deposit, customer notice and billing dispute rules and, when staff considers a rule deficient, it “suggests” changes for the filing utility to make. The Commission’s formalized rules for CLEC providers are specific, however for IECs it is much less so.³⁹ Staff review action is limited because staff has few guidelines upon which to base its review of the multitude of utility-written rules for which the utility is requesting Commission approval. For example, many tariffs have language on “unauthorized usage”, which often state that in the event of any fraudulent use of the service, the unauthorized user can be held liable for legal and detection costs. The problem is customer complaint jurisdiction is generally limited to Commission adjudication of rules written by the utility, which have little or no review before being approved by staff. Because the Commission authorizes the tariff, the staff is required to uphold tariffs the “Commission” has approved, and the utility will correctly argue with the consumer, the civil courts and staff that the tariff is the legal binding document. Ultimately, for the Commission to formally change a tariff rule in effect is a contentious and time consuming endeavor, especially considering the number of individual utilities and their individual tariffs.

The requirement of traditional tariffs for competitive services no longer serves the public interest. Tariffs were traditionally designed for close regulatory oversight of the service offerings of monopolies, and are a product of an era when Commission oversight included the setting of carrier rates. The Commission does not determine rates for competitive services; thus it should not require a regulatory process which no longer serves its intended purpose. Traditional tariff procedures are not appropriate for a

intervention to prevent discriminatory practices. The appropriate form of rate or service oversight given such conditions should be subject to further public comment and review.

³⁹ Such differentiation of rules between CLECs and IECs is appropriate. Staff’s proposal makes such a distinction by identifying specific consumer protection rules applicable to local exchange service.

competitive market because they are resource intensive for both the industry and staff, have little public benefit, and are not particularly consumer friendly.

It might be argued that the remaining purpose for tariffs for competitive services is to ensure the non-discriminatory availability of rates, terms, and conditions of service. This is an insufficient reason to maintain the requirement of filed tariffs, because non-discrimination rules contained in the Public Utility Code and other Statutes are already generally applicable against unjust discrimination, and because carriers' rates for competitive services are no longer regulated – uniform statewide rates are not required.⁴⁰

Staff's recommendation is designed to address some of the inherent problems associated with use of tariffs in a competitive marketplace that disadvantage customers. As described previously, because tariffs are published legal documents, utilities can incorporate by reference tariff rates, terms and conditions into contracts without actually conveying those terms – the “legal” assumption being that consumers are aware of published tariff contents. Clearly, the filed rate doctrine disadvantages consumers when rates, terms, and conditions are obliquely referenced in contracts and agreements, rather than being directly conveyed to the consumer. This is clearly opposite to a key requirement of a competitive market, where consumers are assumed to have sufficient information to make informed choices.

The remedy recommended by Staff is to replace tariffs for competitive services with consumer protection rules. Specifically, service agreements or contracts would not be pre-approved by the Commission, but the Commission would have jurisdiction to forbid certain contract language, in the interest of consumer protection. Informal complaints filed with the Commission would be reviewed by staff to determine the utility's compliance with the Commission's consumer protection rules. Instead of perfunctorily

⁴⁰ See P.U. Code Section 453 for non-discrimination provision. Tracking of discriminatory rates becomes more difficult if the tariff filing requirement is removed.

processing advice letters to amend competitive service tariffs, which are of little or not benefit to customers, Staff could devote more time to studying complaint issues for which the Commission may consider revisions to its consumer protection rules.

In a competitive market without Commission jurisdiction, State and Federal Courts are the arena in which consumers can try to hold utilities accountable. State and Federal Statutes on false advertising and on unfair trade practices apply to the solicitation and sale of all services – including telecommunications services. However, because of the “filed rate doctrine” and the Commission jurisdiction over approved tariffs, the boundaries of jurisdiction and applicable rules become blurred.⁴¹ Utilities often argue before civil courts the jurisdiction of the Commission and the existence of tariffs as legal binding documents – because the outcome of Commission jurisdiction and tariffs are favorable to the utility. Because of the historical application of the “filed rate doctrine” it is easy to see why utilities might favor tariffs, as their use contradicts the requirement to fully disclose rates and charges. Removal of tariff filing requirements would not change the illegality of any discriminatory practices. Further, individual utility tariffs are unnecessary because the Commission can create generally applicable rules through its “General Orders”.

Though tariffs have been useful for identifying utility-specific consumer protections, the staff believes that tariffs could be entirely replaced with a set of consumer protection rules applicable to all competitive services, as these rules would require the availability of all rates, terms, and conditions of service in customer agreements. Recommendation 3 would require competitive service rate schedules and terms and conditions of service to be maintained at carrier offices, subject to consumer protection rules. In regard to the

⁴¹ See Business and Professions Code 17509. For example, it is unlawful to advertise the price of one product or service whose purchase or lease also requires the purchase or lease of a different product or service, unless the prices of all of the products or services are advertised. Regardless of Commission jurisdiction, a District Attorney or Attorney General can prosecute any utility violation of the Business and Professions Code.

applicability of current service agreements, this proposal attempts to replicate what the Commission required of the wireless industry – where, in D.96-12-071, it required wireless carriers to maintain rate schedules and terms and conditions of service in their own offices.⁴²

Current detariffed IEC rules require all contracts to be written and signed. It would be costly for the IEC industry to retroactively convert effective oral service agreements to signed contracts. The proposed consumer protection rules would revise current policy and allow service agreements to be accepted via an oral communication. However rates terms and conditions would have to be provided the customer within 7 days of service initiation. In the interest of protecting customers from abusive oral service agreement marketing practices, the consumer protections do not allow automatic contract renewals that are subject to penalty provisions, and do require the customer's written or recorded acknowledgement of agreement changes in terms and conditions. Although the staff proposal would not invalidate existing agreements, the consumer protections would supercede any term or condition which did not meet or exceed the minimum.

Excluding basic exchange services, the Commission has authority to provide telecommunications carriers the option to be exempted from the tariffing requirements of PU Code Sections 454, 489, 491, and 495. To do so, the Commission must find that either:

1. The specific telephone corporation lacks significant market power in the market for that service, or
2. A given market offers competitive alternatives to most consumers and that consumer protection rules and enforcement mechanisms minimize the risk of unfair competition or anti-competitive behavior.⁴³

⁴² Commission authority to replace CMRS tariffs with carrier-maintained schedules of rates, terms and conditions was provided in AB 1121 (Ch.574, 1996).

⁴³ Section 495.7 of the Public Utilities (PU) Code.

The Commission has previously found that NDIECs operate in a highly competitive market (21 CPUC 2d 549, 554 1986, D.86-08-057). Similarly, CMRS and CLEC services are competitive, which is recognized in their authority. It is appropriate to that these fully competitive, “non-basic” services be detariffed. LECs subject to the New Regulatory Framework (NRF-LECs) are more complicated because they are competitive providers of some services and dominant providers of other services. Fully competitive NRF-LEC Category III services should be similarly treated and detariffed.⁴⁴

The detariffing of services does not preclude Commission authority over detariffed services, nor does it preclude carrier responsibilities to follow the PU Code. In removing the tariff-filing requirement for CMRSs the Commission in Decision 96-12-071 stated:

The purpose behind any tariff-filing requirement would be to adjudicate any consumer complaints and protect consumer interests. In the event such information is needed to resolve a particular consumer complaint or dispute that falls within our current jurisdiction, we still have the authority to require carriers to promptly provide the Commission with the requisite rate and other information. Therefore, we shall continue to require each provider to maintain a record of its rates, other terms and conditions and revisions thereto, at its general office.

Utility services subject to Commission complaint resolution jurisdiction include all “telecommunications services”. Under relevant P.U. Code sections, for all regulated carriers the Commission would continue to address disputes regarding billing, notice and other terms and conditions of service. For example, carriers should provide service to all similarly situated customers on the same basis, and the Commission would entertain complaints regarding discriminatory practices in violation of P.U. Code 453.

⁴⁴ Currently, some NRF-LEC Category III services are subject to price floors and ceilings. Further, D.92-07-072 conditioned spin-off approval of PBIS with Pacific and PBIS consent to tariff enhanced services that PBIS offers (45 CPUC2d at 139-140 Ordering Paragraphs 6, 13-14). Because anti-competitive concerns may still exist, price floors and ceilings should continue to be applicable. Though tariffs would not be required for Category III services, Staff proposes that NRF-LECs would provide a list of its Category III services, of which some may be subject to a price floor if anti-competitive concerns are justified by competing service providers.

Recommendation 4: Review the Limitation of Liability Consumer Protection

Public utilities have the potential to face a considerable amount of risk. The economic value to the purchasers of utility service is potentially much greater than the price the utility charges. For example, when an emergency requires the connectivity of a phone and the utility service fails, the implications could be catastrophic, and enormous compared to the cost of the phone service. For a large service outage, the liability could be astronomical. In the non-regulated marketplace, companies protect themselves first by ensuring service, and second by maintaining liability insurance.

Telecommunications utilities have traditionally enjoyed a Commission-sanctioned limitation on damages resulting from utility negligence.⁴⁵ Similarly, the Commission has conferred a limitation of liability upon the energy services industry, though no limit is provided for at-fault damages.⁴⁶ Industries previously rate regulated like the aviation and railroad industries do not have sanctioned limitations of liability.⁴⁷ The limitation afforded utilities under the jurisdiction of this Commission was designed to insulate both companies and ratepayers from excessive liability and in so doing, ensure the availability and affordability of utility services. If utilities were subject to unlimited liability, conceivably a large award of damages could jeopardize services to its customers, and because carrier return (profit) was controlled within rate proceedings, ratepayers would bear any liability risk through Commission regulated rates.

⁴⁵ The current negligence liability cap is \$10,000 for the two largest California LECs. See Pacific Bell Tariff A.2, Rule 11 and GTE of California Tariff D&R, Rule 26.

⁴⁶ For example, PG&E Tariff Rule 14 excludes liability for “acts of God”... “except that arising from its failure to exercise reasonable diligence.” Under the exception, no liability limit is provided.

⁴⁷ Department of Transportation (DOT), Federal Aviation Regulations require carriers to obtain liability insurance, per FAR, Part 198. The DOT, Federal Railway Administration does not

Footnote continued on next page

The issue of the limitation of liability is germane to this discussion because removal of tariffs would result in a loss of the limitation of liability. The P.U. Code, Section 495.7(h) explicitly forbids the tariff limitation of liability from applying to services not offered under a tariff.⁴⁸ It states:

Any telecommunication service exempted from the tariffing requirements of Section 454, 489 and 491 and 495 shall not be subject to the limitation on damages that applies to tariffed telecommunications services.⁴⁹

In compliance with PU Code 495.7, the Commission, by D.98-08-031 established procedures to detariff services based upon an IEC carrier's request. The result is divergent application of the limitation of liability within a class of carrier for which the Commission no longer establishes rates, based solely upon filing of tariffs. Thus, an incentive exists for IECs to continue to file tariffs with the Commission in order to maintain the limitation of liability.⁵⁰ Because this is occurring, staff asks the questions:

1. What public benefit is served by a state policy which treats the tariff liability limitation as a quid pro quo for the filing of tariffs?
2. Shouldn't a liability policy be rationalized based on public need?

Analysis of status quo: There is little benefit to the public of the continuation of tariff filings. The continuance of the tariff filing requirement is causing public harm in the form of increased regulatory costs and the continuation of utility rules which limit consumer rights, and which undermine the effective role of the Commission in filed disputes.

confer any limitation of liability upon the rail industry. Any current limitation of liability would be contained within carrier agreements.

⁴⁸ There are approximately 156 registered IECs that are not required to file tariffs with the Commission. It is presumed that these carriers serve few customers.

⁴⁹ P.U. Code Section 495.7 does not preclude the establishment of a limitation of liability applicable to non-tariffed carriers when such limitation is separate from that contained in utility tariffs, such as in a contract (See D.98-08-031, p.5).

Continued unequal application of the Commission sanctioned limitation of liability may distort competition and investment and may result in unfair regulatory advantage. For example, in many metropolitan areas, wireless phones are used daily as a substitute for local wireline phones. Because the basic exchange services provided by wireline carriers must be tariffed, the wire line provider has a Commission-approved limitation on liability, whereas the wireless carrier may not, and thus the wireless carrier would be subject to damages in civil court, while the wire line carrier would not.⁵¹ Further, since the limitation of liability applies to LEC tariffed services non-tariffed resale carriers would be fully subject to tort liability even though the service fault may have been caused by the underlying carrier that is protected by limited liability. Such scenarios underscore the necessity to have rules that are consistent within the industry. Two options to the status quo are:

1. Entire elimination: Remove the sanctioned liability limitation from all carriers not subject to rate regulation, or
2. Blanket retention: Provide a limitation of liability in the consumer protection rules.

Argument for elimination: Entire elimination would be competitively neutral. Elimination would not preclude telecommunications carriers from instituting their own limitations of liability, though consumers would have the ability to challenge the utility beyond reasonable liability protections usually contained in service contracts. Entire elimination may result in an increase in costs, which would likely be recovered through rates.

⁵⁰ The tariff limitation of liability is not the only incentive for carriers to continue to file tariffs. Decision 98-08-031 requires all contracts with detariffed IECs to be written and signed, which would be prohibitively costly for carriers to implement retroactively.

⁵¹ CMRS carriers have successfully argued before civil courts that the Commission has the exclusive jurisdiction over terms and conditions, which include the limitation of liability. The applicability of the Commission's sanctioned limitation of liability is questionable when carriers do not file tariffs with the Commission, and thus, the CMRS industry has promoted state and federal legislation that limits their liability. Wireless carriers have been granted protection from liability on 911 calls to the same extent as wireline carriers. See FCC Docket No. 94-102; FCC 99-352, and "Wireless Communications and Public Safety Act of 1999, Page 113 STAT. 1286, Public Law 106-81, 106th Congress.

Vulnerable companies might default as a result of large damage awards, and investment may be negatively effected.

Elimination would put telecommunications companies on a similar par with energy utility tariff protections. In the energy services industry, PG&E is only protected from damages that are beyond its control; however it is responsible for reasonable damages resulting from its negligence.⁵²

For the majority of telecommunication companies and the majority of Californians served by them, the Commission no longer sets rates, and carrier returns (profits) are subject to market risk. Because the mechanism used to justify the limitation of liability no longer exists, some have argued that the limitation of liability is no longer appropriate. Under this argument, the only telecommunications companies for which the traditional liability limitation rationale may still apply are LECs subject to traditional rate regulation and which have no wireline or wireless telephone competition.⁵³

The rationale for the limitation of liability being tied to rate regulation is recognized by two court decisions. The California Supreme Court has stated that the purpose of the tariff limitation of liability is based upon the costs of limited liability being factored into rates established by the Commission.⁵⁴ Further, the California Superior Court implied

⁵² PG&E Tariff Rule 14 – Shortage of Supply and Interruption of Delivery.

⁵³ The Commission regulates 19 small California LECs via General Rate Cases (GRCs).

⁵⁴ See Waters v. Pacific Telephone Co., 12 C.3d (1974). The California Supreme Court stated that a Commission-approved limitation of liability provision contained in public utility tariffs barred a damage suit, based on ordinary negligence, in civil court. The court reasoned that the Commission had authorized the Telephone Company to include a limitation of liability provision in its tariffs, which the Commission took into account in setting rates for the company. The court thus concluded that to allow a suit for damages against the Telephone Company would impermissibly interfere with the Commission's ratemaking functions and its policies limiting liability, and thus conflicted with Section 1759 of the PU Code.

that, following federal “pre-emptive” rate making, the tariff liability limitation provision would no longer apply.⁵⁵

Argument for blanket retention: Blanket application of the sanctioned limitation of liability would do two things. First it would not allow compensation from damages that are beyond the utility’s control. Second, it would limit damage award compensation resulting from utility negligence. The theory is that blanket application would protect carriers from excessive tort and liability costs thus reducing price increase pressures. Such protection may promote investment. Further, blanket retention would be competitively neutral for telecommunications carriers and would defer to a later date the issue of removing the sanctioned limitation of liability for all carriers.

The limitation of liability may be considered a consumer protection if it allows an individual to seek compensation for harm due to negligence, and if the effect of the award limitation amount keeps rates lower than they would be otherwise. This may be appropriate where the harm to a few large consumers is disproportionate to what might occur to the average residential or small business consumer. For example, the average consumer does not engage in million dollar financial transactions. If without a limitation of liability a utility were successfully sued for an individual’s loss of a million-dollar transaction, the average consumer would be transferring wealth through higher rates due to a claim disproportionate to claims average consumers would ever make. Damage awards felt to be excessive for economic harm, and pain and suffering, have

⁵⁵ See LA Cellular v. Superior Court, 65 Cal. App. 4th 1013. The Superior Court notes in footnote 3 of that decision, that the injury suffered by the plaintiff occurred before the preemptive rules went into effect, so that LA Cellular’s tariff, filed in 1989 with the limitation of liability provision, still applied. The implication is that once the preemptive rules took effect, which the court indicates happened in 1995, the tariff provision would no longer have applied. Note: The reason for the delay in the preemption provisions from 1993 until 1995 was that California had filed a petition with the FCC to continue to regulate cellular rates, and that petition was denied in 1995. The plaintiff in LA Cellular suffered her injury before the preemptive effect of the 1993 law was in place, so her claim was subject to the limitation of liability provision in the cellular carrier’s tariff.

resulted in tort reform in competitive industries – such as the medical industry malpractice liability limitations initiated by California statutes⁵⁶.

Staff Position: Staff proposes the Commission review the appropriateness of the limitation of liability policy. If the Commission determines that a sanctioned limitation is appropriate, Staff proposes that the standard of negligence that a consumer must prove against the utility be changed from “gross negligence” to “negligence”. Further, staff would propose increasing the damage award limitation to reflect inflation.

⁵⁶ See the Medical Insurance Compensation Reform Act.

Appendix A: Telecommunications Consumer Protection Rules

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Scope of Rules: These Customer Protection Regulations apply to the intrastate services of all telecommunication utilities authorized to operate within the State of California by the California Public Utilities Commission. Failure by a carrier to comply with Commission rules may result in penalties as set forth in P.U. Code Sections 2107, through 2111. These rules can not be waived and apply to all service agreements. These rules do not preclude any civil action that may be available by law.

Rule Revisions: The Executive Director of the California Public Utilities Commission is directed to modify rules contained in this General Order to appropriately reflect any change in Commission rule, process, procedure or order.

California Public Utilities Commission
San Francisco, California
www.cpuc.ca.gov

Definitions

Agent: A business representative whose function is to bring about, modify, effect, accept performance of, or terminate contractual obligations between a carrier and applicants or customers.

Basic Exchange Service: A minimum level of telecommunications services each carrier offering local exchange service is required to provide, per Commission order (See: Universal Service Proceeding, R.95-01-020). Local exchange service includes the offering of access to telephone exchange services, or facilities for the purpose of the origination or termination of telephone toll services (See: Section 3(16) of the 1934 Telecommunications Act (47 USCA 153)).

Bill Mailing Date: The postmark or postage meter date indicated on the billing envelope, receipt date on electronic mail, or bill mailing date as recorded by the utility.

Carrier: Any Telephone Corporation operating within California. Telephone corporations are responsible for their agent's compliance with these rules.

Commission: The Public Utilities Commission of the State of California (CPUC).

Complaint: The Commission has three different complaint procedures.

1. Informal Complaint: A consumer complaint regarding an intrastate utility service communicated to the CPUC, Consumer Affairs Branch (CAB). CAB representatives assist consumers in resolving complaints prior to the filing of an "Expedited" or "Formal" complaint. (See Consumer Affairs Branch Below)

2. Expedited Complaint: An abbreviated procedure, which leads to quick resolution and decision by an Administrative Law Judge. Available for cases where the disputed amount is under \$5,000. No attorneys may represent either party. No court reporter is present. Hearing is held within 14 days after defendant utility's answer is filed. If appealed by either party and rehearing is granted, the case is reheard under the formal complaint procedure.

3. Formal Complaint: A process that includes evidence, hearings, and briefs, with a decision drafted by an Administrative Law Judge, and approval or rejection by Commissioners at a public Commission meeting. Attorneys may represent parties. A court reporter is present. A formal complaint shall be completed within one year. No time deadline for holding a hearing. If appealed by either party, and rehearing is granted the rehearing will be conducted under these same procedures. Formal complaints must assert a violation of a tariff, rule, law or order, or must comply with P.U. Code Section 1702.

Consumers can get information or assistance with the Commission's formal or expedited complaint procedure by contacting the Public Advisor's office at:

CPUC - Public Advisor
505 Van Ness Avenue, Room 5303
San Francisco, CA 94102
(415) 703-2074
Email: public.advisor@cpuc.ca.gov

Consumer: A member of the public at large, who subscribes, or may potentially subscribe to a utility service for personal or household use as defined in Civil Code Section 1761.D, or for business or commercial use.

Consumer Affairs Branch: The CPUC office where consumers may complain about a telephone, gas or electric utility service or billing problem within California, which they have not been able to resolve with the utility. Consumers may write or call the CPUC at:

CPUC, Consumer Affairs Branch
505 Van Ness Avenue, Room 2003,
San Francisco, CA 94102
Or; email to "consumer-affairs@cpuc.ca.gov"
Phone 1-415-703-1170, or 1-800-649-7570.
For TDD, call 1-800-229-6846.

The agency a consumer should contact if the matter concerns interstate or international calls is the Federal Communications Commission (FCC) at:

FCC, Common Carrier Bureau
Consumer Complaints
Mail Stop 1600 A2
Washington, DC 20554

Or via the Internet, at www.fcc.gov/ccb/enforce/

Customer or Subscriber: Any person, corporation, reseller or other entity that has applied for, or subscribes to utility service subject to CPUC jurisdiction.

Day: A calendar day unless otherwise noted.

Mandated fees: Fees, taxes and surcharges the FCC and CPUC require carriers to collect from their customers and remit to the regulatory or other specified authority.

Carrier rates and charges: Carrier rates and charges to recover their costs of doing business, including access charges.

Rule 1: Carrier Disclosure

- a. Carriers shall publish on its utility website the rates, charges terms and conditions of service of its publicly available residential and small business offerings.
- b. A Carrier shall, upon request, immediately provide the following:
 - (1) Rates, charges, and terms and conditions of any of its publicly offered services, or product that would result in a charge on a phone bill, shall be provided in writing to the consumer requesting such.
 - (2) The carrier's registration number (Cal. PUC U-#) and all legal "doing business as" names used in providing telecommunications services within California.
 - (3) The address and toll free telephone number of the CPUC Consumer Affairs Branch to verify its registration number, or to file a complaint.
 - (4) A toll-free number to call for service information or billing inquiries, and an address where the customer may write the utility to resolve service or billing disputes.
 - (5) The address and phone number of all companies whose charges appear in the carrier's monthly statements.
 - (6) An explanation of how the carrier handles customer private information, and a disclosure of any ways that such information might be used or transferred.
- c. Although no terms may be incorporated by reference, formulae may be used to calculate rates or charges where the components of the formulae can be readily ascertained from a public source.

Rule 2: Marketing Practices

- a. All solicitations by carriers or their agents provided to customers shall be legible and printed in 10-point type or larger.
- b. All promotional and marketing materials used in the offering of telecommunications services shall be wholly separate from any service agreement or written contract the customer may sign.
- c. All terms shall be plainly stated in understandable language, and shall be in the same language employed when the carrier negotiated a service agreement or contract with the customer.
- d. Marketing materials may not misrepresent rates, terms and conditions of service. Marketing materials that misrepresent rates, terms and conditions of service in the customer's favor shall be applicable. Rates

and charges specific to the advertised service shall be clearly disclosed in the advertisement.

- e. No carrier, person, firm, or corporation representing a carrier shall change a customer's pre-subscribed telephone service provider without the customer's authorization. Note: All carriers shall comply with the provisions of P.U. Code Section 2889.5 as well as other applicable state and federal laws as they may be amended or superseded from time to time).
- f. No carrier whose service has been cancelled by a customer shall re-establish service for that customer without a new customer authorization. Authorization may not be founded upon any term in a written agreement for service that binds the customer to again take service from the carrier for a specified term, or continually.

Rule 3: Service Initiation for Subscribed Services

- a. Services may be initiated based on a written, electronic or oral agreement. In each case, all ambiguities in the agreement will be construed against the carrier.
- b. Carriers shall provide a written record to the consumer of an order within seven (7) days of securing that order.
- c. All rates, terms, and conditions of service shall be provided to the customer in writing, electronic or otherwise, within 7 days of establishing service.
- d. Agreements containing any cancellation (early termination) charges shall be clearly identified, in no less than 10 point type, in writing and signed by the customer in acceptance of the cancellation agreement.
- e. All disputed oral and written authorizations for which no record of verification is available are subject to a rebuttable presumption that the charges are unauthorized.
- f. Consumers shall not be liable for services not ordered as defined in P.U. Code Section 2890.
- g. Charges for "customer activated services" are not authorized unless the consumer knowingly and affirmatively activates the service by dialing or some other affirmative means. Going from "onhook" to "offhook" (e.g., lifting the receiver) shall not in itself activate a charge without an associated affirmative means.

Rule 4: Additional Rules for Local Exchange Service Initiation:

- a. Carriers providing local exchange services shall provide potential customers initiating residential "Local Exchange Service", with information on the following:

- (1) Availability, eligibility requirements and discounts associated with the Universal Lifeline and Deaf and Disabled Trust Programs.
 - (2) Availability and effect of freezing the “pre-subscribed” carrier assigned to the account.
 - (3) Availability and effect of toll restriction.
 - (4) Availability and effect of blocking of 900 and 976 pay-per-call telephone information services at the time service is ordered. This blocking service shall be made available free of charge to residential customers, although carrier may impose a charge if the customer asks for the deactivation of blocking.
 - (5) Availability and effect of blocking non-telecommunication related service from being billed within the telephone bill.
 - (6) Availability and effect of blocking non-presubscribed carrier (e.g., third party) charges from being billed on the telephone bill.
 - (7) Availability and effect of withholding the caller’s telephone number, and/or name or information on an individual call basis and line-blocking basis, from the telephone instrument of the individual receiving the telephone call placed by the caller.
- b. Applicants for service who are denied service shall be provided reasons for denial within 10 days of the service denial. Denial shall be provided in writing if the customer requests a “written denial”.
 - c. The utility shall provide a customer a four-hour time period in which it will arrive to install or repair service when customer presence is required. If the carrier fails to install or repair basic telephone service within that time period, the carrier shall provide a \$25 credit to the customer independent of any civil action by the customer, e.g., Civil Code Section 1722.

Rule 5: Local Exchange Service Credit and Deposits

- a. A deposit in lieu of satisfactory credit for service cannot be refused.
- b. In no event shall the deposit be more than twice the average customer bill, except that if the customer does not pay the balance owed to a previous serving utility within thirty days, a separate, additional deposit may be required.
- c. When deposits are accepted, interest will be added to the amount on deposit using an annual percentage rate of no less than 5%. Deposit amounts used to pay a delinquent bill shall receive interest for the period during which it was held on deposit at the same rate.

- d. Any deposits less the amount of any unpaid bills for service furnished by the carrier shall be refunded with interest, as described in paragraph (c) of this rule, within 30 days after the discontinuance of service, or after one year if applicant has established a record of payment in compliance with the carrier's terms, whichever is earlier.

Rule 6: Billing

Telephone bills may not contain charges for non-telecommunications related services. Each bill for telephone service shall contain notations concerning the following areas:

- a. Carrier's name and "FCC # or Cal. PUC U-#".
- b. Bill mailing date.
- c. Payment due date.
- d. Period of service covered by the bill.
- e. Late payment charge (if applicable) and when applied.
- f. How and where to pay the bill.
- g. Company's toll-free number for answering billing and service questions and to address disputes.
- h. Billing detail including a clear and concise description of each service or product, and separately identified rates and charges.
- i. Mandated fees, taxes and surcharges shall be separately and appropriately identified as "mandated fees", specifying the specific fund title and charge amount. Carrier rates and charges may not be construed as fees, taxes or surcharges and may not be included in the "mandated fees" portion of the carrier bill.
- j. Services appearing upon the telecommunications bill for the first time shall be identified as "New".

In addition to the above, each bill rendered for intrastate service shall include the following, or factually similar statements:

"If you have a billing or service complaint which you have not been able to resolve with the utility, you may write or call;

CPUC, Consumer Affairs Branch
505 Van Ness Avenue, Room 2003
San Francisco, CA 94102

Toll Free at 1-800-649-7570 or TDD 1-800-229-6846

Email: consumer-affairs@cpuc.ca.gov

If your complaint concerns interstate or international calls, you should contact the Federal Communications Commission (FCC) at:

Common Carrier Bureau
Consumer Complaints
Mail Stop 1600 A2
Washington, DC 20554”

Rule 7: Late payment, Back-billing, and Prorating of Charges

- a. Late Payment Charges. A late payment charge of not more than 1.5% per month may be applied to the undisputed, overdue telephone bill amount. The bill amount becomes overdue when the utility or agent does not receive payment on or before the payment due date. The late payment date shall not be less than 16 days after the bill mailing date. Carriers shall credit payments on the business day payments are received by the carrier or its agent, to avoid assessing late payment charges incorrectly. Late payment charges shall be credited to the customer for amounts that are in dispute. Late payment charges shall not be applied to amounts in dispute that are resolved in the customer's favor.
- b. Backbilling. A bill shall not include any previously unbilled charge for intrastate service furnished prior to three months immediately preceding the date of the bill, four months in the case of CMRS “roamer” charges on a foreign system, and five months for collect and 3rd party billed calls. A backbilling period of one and one-half years will be permitted in cases involving customer fraud. Customers are permitted a period of three years to seek redress in the case of utility over-billing.
- c. Prorating Charges. Carriers shall prorate customer monthly recurring charges for service for partial months. A 30-day month may be used for prorating in lieu of calendar days.

Rule 8: Notices of Change in Service Terms and of Ownership

- a. All affected customers shall be notified of any increase in rates, charges, or change in terms and conditions contained in an agreement that negatively impact the customer, at least 15 calendar days before the change becomes effective, with the exception of mandated fees.
- b. Any notice the carrier sends to customers, or the Commission, shall be legible and printed in a 10-point type or larger. Such notice shall be sent via first class mail or through electronic means agreeable to the customer. Notice shall contain the carrier's name and “FCC #” or “Cal. PUC U-#”.
- c. No change in the rates, terms, and conditions of any service specified in a written contract shall be enforceable unless such change is set forth in writing signed by the customer who signed the original contract, or that customer's duly authorized agent.

- d. Customers shall be notified of any change of ownership of the company providing service to the customer as follows:
 - (1) The notice shall be in writing.
 - (2) The carrier shall provide it to customers no later than 30 days before the proposed transfer.
 - (3) The notice shall contain a straightforward description of the upcoming transfer, any change in the customer's service agreement, a statement of the customer's right to switch to another carrier, and a toll-free telephone number for questions.

Rule 9: Service Termination and Notice

- a. Any deposits, less the undisputed amount of any unpaid bills for service furnished by the carrier, shall be refunded within 30 days after the discontinuance of service, or after one year if applicant has established a record of payment in compliance with the carrier's terms, whichever is earlier.
- b. Notices to terminate service for nonpayment of bills shall be provided in writing to the customer not less than 7 calendar days prior to termination, with the exception of termination for customer acts of fraud.
- c. Carriers may not disconnect local exchange or long distance telephone service for failure to pay disputed charges for "information services" (non-telecommunications related services) or separately billed charges of other telephone companies, pursuant to P.U. Code Sections 2884 – 2882.6 and 2889 – 2889.2.
- d. Each notice of termination shall include all of the following information:
 - (1) Carrier's name and "FCC #" or "Cal. PUC U-#".
 - (2) The name and address of the customer whose account is delinquent.
 - (3) The amount that is delinquent.
 - (4) The date when payment or arrangements for payment are required in order to avoid termination.
 - (5) The toll-free telephone number of a representative of the carrier who can provide customer assistance.
 - (6) The utility procedure the customer may use to initiate a complaint or to request an investigation concerning service, rates, or charges.
 - (7) The telephone number of the Commission's Consumer Affairs Branch where the customer may direct inquiries.

Rule 10: Additional Rules for Termination of Local Exchange Service

- a. Service may be discontinued for nonpayment of bills, provided notice of the proposed discontinuance is provided pursuant to Rule 7, or acts of the customer are such as to indicate intention to defraud the carrier. This includes fraudulently placing and receiving calls and/or providing false credit information. In cases of customer acts of fraud, the carrier shall have the right to refuse or discontinue service without advance notice. The rules in Commission Decision 91188, regarding discontinuance of service related to criminal prosecution, will remain in effect for carriers.
- b. Carriers may not disconnect service on any day carrier service representatives are not available to serve customers.
- c. Carriers may not disconnect local service for non-payment of another carrier's long-distance service.
- d. The customer shall be informed of the availability of an alternative payment plan, and if such arrangement is agreed to, the customer shall be informed in writing of the terms of such arrangement.

Rule 11: Billing and Service Disputes

- a. In the case of a billing dispute between a customer and the carrier, the carrier will investigate and review the disputed amount.
- b. If a customer fails to pay the undisputed portion of the bill by the Payment Due Date (no sooner than fifteen days after the bill mailing date) shown on the bill, the carrier may notify the customer in writing of such delinquency and indicate that service may be terminated.
- c. A carrier may not disconnect service to a customer within seven calendar days after the date the carrier notifies the customer that the carrier's investigation and review are completed. In no event shall the carrier disconnect service prior to the "due date" shown on the bill.
- d. A carrier may not disconnect service to a customer if the customer has submitted a pending claim to CAB for informal review, and deposited the disputed amount with the Commission, so long as the undisputed amount has been paid.
- e. The customer has a right to bring a complaint to the CPUC without being held liable for utility legal costs.

Rule 12: Privacy

- a. Service terms and conditions of service shall clearly state consumer privacy rights and the ways in which personal information may be used.

- b. Information related to a customer's telephone number shall not be resold to third parties or shared with affiliates. Providers may release customer information to a third party or affiliate only with the written consent of the customer.
- c. Local Exchange Service providers shall present new and upgraded services with privacy implications for Commission review and approval before they market these services to the public, pursuant to General Order 96B.
- d. Consumers shall be given the opportunity to block on a per-call and per-line basis at no extra charge, new services that have a privacy implication.
- e. The collection of customer information shall be limited to that which is necessary to provide phone service.
- f. Customer requests to access information the carrier may have regarding the customer shall be honored.
- g. As a means to control unreasonable intrusions upon their privacy, customer requests to be removed from sales solicitation lists shall be honored.
- h. Carriers are restricted from releasing nonpublic customer information in accordance with P.U. Code Sections 2891, 2891.1, and 2893, and any other applicable state or federal statutes or regulations, as they may be amended from time to time, that pertain to customer privacy. Carriers shall also comply, so long as those rules remain generally applicable to other carriers, with the Commission's rules set forth in Appendix B of Decision Nos. 92860 and 93361, as modified, which generally prohibit, with certain exceptions, the release of calling records and credit information of all subscribers – both residential and business – absent the receipt of a search warrant under federal or state authorities or in response to a subpoena or subpoena duces tecum authorized by a federal or state judge.

Rule 13: Staff Requests

The carrier shall fully comply with a request for documents or information by the Commission or its staff no later than ten business days from the date of request. This includes but is not limited to the customer-carrier service agreement or contract, billing records, customer calling records, solicitations and correspondence from the carrier to the customer, applicable third party verifications, and any other information or documentation regarding a customer complaint.

Rule 14: Employee Identification

Each carrier shall cause any employee or contract employee to be issued an identification card, if in the course of employment the employee will be requesting entry into any building or structure, and shall require the employee to present such card to a customer. Each carrier shall cause each employee to identify himself or herself at the request of any applicant or customer in a telephone conversation with his or her first and last name or a unique employee identifier.

Rule 15: Emergency 911 Service

All carriers providing access services shall, to the extent permitted by facilities, provide connection with "911" emergency services regardless of whether the account has been established or terminated as require by P.U. Code Section 2883 and federal statutes.

Appendix B: Consumer Protection Policy Changes

Many of the rules contained in the staff proposal consolidate existing rules. In addition, staff proposes several new rules to address specific consumer protection related issues. The following list identifies those staff proposed rules contained in Appendix A, which change current consumer protection policy.

1. Agreements: Current policy is that IECs electing to not file tariffs must have written agreements and acceptance. The report would require carriers to give written service terms and conditions to customers, however customers' acceptance may be oral. Any agreement containing an early termination penalty requirement would have to be identified in no less than 10-point type and acknowledged by the customer in writing.
2. Disclosure: Current rules do not require carriers to post rates, charges, terms and conditions in a public place, other than in the Commission office and the main carrier office in California. The proposal requires carriers to post residential and small business service offerings on their website, and to provide them in writing upon request.
3. Disclosure: Current practice is that consumers are not provided complete information regarding their rights. The proposal is to require that the telecommunications consumer protections be available on the CPUC and each carrier's website, and provided by the CPUC to community based organizations.
4. Marketing: Currently, contract terms and marketing materials that violate tariff terms are not valid. Proposed rules clarify that marketing of a service must clearly disclose applicable usage rates and periodic charges. Misrepresentations favoring the customer will be applicable.
5. Marketing: Currently, carriers can establish tariff rules that automatically bind customers to a renewed contract term when the customer's oral acceptance of a service offer is provided during the term of the original contract. Proposed rules establish that such authorization may not be founded upon any term in a written agreement for service that binds the customer to again take service from the carrier for a specified term, or continually.
6. Service initiation: Currently, service terms and conditions are governed by utility tariffs. A carrier need not provide all terms and conditions of service. Staff proposes that a carrier provide a customer written rates, terms and conditions of service within 7 days of receiving the customer's service order.
7. Service initiation: Currently, no rule defines whether charges are authorized if no authorization is recorded. Staff proposes that where no record of verification is available, services be subject to a rebuttal presumption that the charges are unauthorized.
8. Service initiation: Currently, some services are designed such that consumers can unwittingly activate them without their knowledge or consent. Staff proposes

that customer activated services are not authorized unless a consumer, knowingly and affirmatively activates the service.

9. Local service: Currently, when customers are required to be present during an installation or repair, they may not be offered a four-hour window within which the carrier will arrive. Staff proposes that customers be assured that arrival will occur within a four hour period.
10. Local service: Currently, customers are unable to prevent a third party from placing charges on their phone bill. Staff proposes that carriers must provide customers the option of blocking non-presubscribed carrier (e.g., third party) charges from being billed on the telephone bill, with the exception of dial-around service billing.
11. Local service: Currently, only GTE provides its local service customers a service credit when it fails to provide a basic exchange service installation or repair by the time agreed upon with the customer. Staff proposes that all carriers that offer local exchange service should provide customers a \$25 credit in such instances.
12. Service bill: Currently, it is easy for consumers to construe a carrier's "elective" charge, such as a flow through of an "excise tax", as a regulated or mandatory charge. Under billing, staff proposes that mandated regulatory fees and surcharges be separately and appropriately identified as "regulatory fees"... carrier rates and charges may not be construed as fees, taxes or surcharges and may not be included in the "regulatory fees" portion of the carrier bill.
13. Service bill: Currently, rules do not require a description of each service billed. Staff proposes that each bill contain a clear and concise description of each service or product and separately identified rates and charges.
14. Service bill: Currently, service providers, and according to legislation, upon January 1, 2001, any business can place charges through billing consolidators on a consumer's telephone bills. In order to provide a consumer with the best ability to recognize new charges, staff proposes that "any service or product, resulting in a rate or charge appearing on a bill for the first time" be prominently flagged with the word "new". Further, under local service rules, staff proposes carriers provide customers the option of blocking of non-telecommunications related services from being billed on a customer's telephone bills.
15. Service bill: Currently, phone bills are not required to indicate the CPUC and FCC addresses, phone number and website. Staff proposes each be listed at least once on a customer bill.
16. Service Bill: Currently, it is not clear that "late payment charges" (LPC) may not apply to amounts in dispute resolved in the customers' favor. In such cases, staff proposes that LPCs be refunded to consumers.
17. Notices: Currently, carriers are allowed minor rate increases without notifying affected customers, and major rate increases require 30 days prior notification. Staff proposes that all (not just major) increases in rates and charges, including

changes in terms and conditions that negatively affect the customer shall be noticed to affected customers 15 days prior to taking effect.

18. Notices: Currently, utility numbers are not required to be indicated on notices. Staff proposes that the FCC or CPUC utility number be listed on all notices.
19. Privacy: Currently, a utility can share information with an affiliate for purposes of marketing. Staff proposes that collection of information by a carrier be limited to that necessary to provide phone service, that carriers provide a customer information or access to information maintained by the carrier about that customer. Further, staff proposes that information related to a customer's account may not be resold to third parties or shared with affiliates, except that it may be shared with an affiliate if the customer has given written consent to do so.

Appendix C: Summary of CMRS Complaints Reviewed

Available upon request from rw1@cpuc.ca.gov.

In order to protect the privacy of the complainant, their names and addresses are not included.